

State Board of Education
June 14, 2010
Item H

Team: Legal Office and Integrated Support for Learning

Discussion Topic: Emergency Rules: Proposed State Rules for the Use of Restraints & Seclusion in Schools

Statutory Authority:

Individuals with Disabilities Education Act of 2004 (IDEA 2004); 16 V.S.A §2971-2974; S.B.E Rules 2360-2369, 4314; and 3 VSA §844

Background Information:

The appropriate use of restraints and seclusion is an important issue affecting many students and staff in schools throughout the country, including Vermont. Currently, Vermont has no statute or rule regulating their use. Around the country there have been documented instances of injury and death to students as a result of improper restraint or seclusion. Last year a committee of advocacy groups, Department staff and school district staff worked to create language for rules on the use of restraints and seclusion on students in public schools, but there was ultimately no agreement on language. Bills were introduced in the legislature both this year and last year that would have imposed restrictions on the use of restraints and seclusion on students in public and independent schools. Bills were also introduced in the U.S. House and Senate, and rule making was put on hold in part to wait and see what the outcome of federal legislation would be. The Vermont legislature decided not to pursue legislation this year due, in part, to the Department's representation that rules would be written and put into effect by the beginning of the 2010-2011 school year, if possible. The Department is therefore seeking to have emergency rules adopted so they can be in effect for the beginning of the 2010-2011 school year and provide necessary restrictions and/or prohibitions on the use of restraints and seclusion so that schools remain safe places for students and staff. The attached draft language is preliminary and there may be some revisions prior to the adoption of these rules in August.

Purpose of Discussion:

Respond to comments and questions from Board members prior to August 17, 2010 vote on proposed rules.

Cost Implications:

There are presently no anticipated increases in cost associated with these rules changes.

Staff Available:

Susan Marks

Rule 4500

PROPOSED STATE RULES FOR THE USE OF RESTRAINT & SECLUSION IN SCHOOLS

4500.1 STATEMENT OF PURPOSE

To promote positive behavioral intervention and supports in schools, prohibit the use of mechanical restraint, chemical restraint, prone physical restraint, supine physical restraint and to restrict the circumstances under which restraint and seclusion may be used.

4500.2 APPLICABILITY

These rules are applicable to all preschool, elementary and secondary schools, approved independent schools and approved tutorial programs that serve students in whole or in part at public expense.

4500.3 DEFINITIONS

For purposes of these rules, the following definitions apply:

1. Chemical restraint means a drug or medication used on a student to control behavior or restrict movement that is not:

- (a) Prescribed by a licensed physician for the standard treatment of a student's medical or psychiatric "Condition"; and
- (b) Administered as prescribed by the licensed physician.

2. Mechanical restraint means the use of any device or object that restricts a student's movement or limits a student's sensory or motor functions unless under the direction of a healthcare professional.

The term does not include seat belts in wheelchairs or on toilets, or a seat belt or harness used for balance or safety on a car or bus

3. Physical restraint means the use of physical force to prevent an imminent and substantial risk of bodily harm to the student or others.

Physical restraint does not include

- (a) The brief contact by an adult to calm or comfort;
- (b) The minimum contact necessary to escort a student from one place to another;
- (c) Hand-over-hand assistance with feeding or task completion; or
- (d) Techniques prescribed by a qualified medical professional for reason of safety or for therapeutic or medical treatment.

4. Prone physical restraint means holding a student face down on his or her stomach using physical force for the purpose of controlling the student's

movement.

5. Supine physical restraint means holding a student, on his or her back through physical force for the purpose of controlling the student's movement.

6. Physical escort means touching or holding a student who is exhibiting minimal resistance without the use of force for the purpose of directing movement from one place to another.

7. Seclusion means the confinement of a person in a room or area from which the person is physically prevented or reasonably believes he or she will be prevented from leaving. The use of a time-out room for brief periods of time is not seclusion.

8. Time-out room means a designated room used to separate a student from others for a brief period of time for the purpose of preventing or stopping harmful behavior or limiting its intensity or to enable a student to regain composure and return to a class or other activity.

9. Emergency means a situation in which a student's behavior presents an imminent, and substantial risk of bodily harm to the student or others.

10. Substantial risk means an imminent threat of bodily harm where there is an ability to enact such harm. Substantial risk shall exist only if all other less restrictive alternatives to diffuse the situation have been exhausted or failed or the level of risk prohibits exhausting other means.

11. Student means a student enrolled in a school as defined in paragraph (12), except that in the case of a independent school or approved tutorial program, such term means a student enrolled in such a school or program that serves students in whole or in part at public expense.

12. School means any entity that is a public school preschool, elementary school or secondary school, approved independent school or approved tutorial program that serves students as a day or residential program in whole or in part at public expense.

4501 RESTRAINT AND SECLUSION; PROHIBITIONS:

4501.1 School personnel shall be prohibited from imposing on a student any of the following as defined in rule 4500.3:

- (a) Mechanical restrain,
- (b) Chemical restraint,
- (c) Prone physical restraint,
- (d) Supine physical restraint,
- (e) Physical restraint or escort that restricts breathing, communication,

or that causes unnecessary pain.

4501.2 Physical restraint or seclusion shall not be used:

- (a) For convenience of staff;
- (b) As a substitute for an educational program;
- (c) As a form of discipline or punishment;
- (d) As a substitute for inadequate staffing; or
- (e) As a substitute in staff training in positive behavior supports and crisis intervention and prevention.

4501.3 Local education agencies and schools may have policies and procedures for the use of physical restraint and seclusion in school safety plans, provided such plans are consistent with these Rules.

4504 CIRCUMSTANCES UNDER WHICH PHYSICAL RETRAINT AND SECLUSION MAY BE USED

4502.1 Physical restraint or seclusion, not otherwise prohibited by these Rules, may be used only:

- (a) When a student's behavior poses an imminent and substantial risk of physical injury to the student or others;
- (b) Less restrictive interventions would be ineffective in stopping such imminent danger of physical injury; or
- (c) In accordance with a school-wide safety plan that is consistent with these rules; and
- (d) In a manner that is safe, proportionate to and sensitive to the student's:
 - a. Severity of behavior;
 - b. Chronological and developmental age;
 - c. Physical size
 - d. Gender
 - e. Physical, medical and psychiatric condition;
 - f. Ability to communicate;
 - g. Cognitive ability; and
 - h. Personal history, including any history of physical or sexual abuse.

4502.2 Restraint or seclusion shall be imposed only by school personnel or contract service providers trained by a State-approved training program unless, due to the unforeseeable nature of the danger of the circumstance, trained personnel are not immediately available.

4502.3 Restraint or seclusion shall only be imposed by school personnel or contract service providers who-

- (a) Continuously monitor the student face-to-face; or
- (b) Is in direct visual contact with the student, if school personnel safety is significantly compromised by face-to-face monitoring..

4502.4 Such restraint or seclusion shall be terminated as soon as –

- (a) The student demonstrates significant physical distress indicating a possible need for emergency medical assistance; or
- (b) The student's behavior no longer poses an imminent danger of physical injury to the student or others;
- (c) Less restrictive interventions would be effective in stopping such imminent danger of physical injury.

4502.5 The student shall be evaluated and monitored for the remainder of the school day on which physical restraint or seclusion was imposed.

4503 **DOCUMENTATION AND REPORTING THE USE OF RESTRAINT AND SECLUSION**

4503.1 Each and every use of physical restraint or seclusion and the reason for each use shall be-

- (a) Documented in writing in accordance with the requirements of Rules 4503.2;
- (b) Reported to the building administrator or designee immediately;
- (c) Reported to the student's parents or legal guardians verbally or electronically immediately, or as soon after as is reasonable, and in no case later than twenty four (24) hours after the event and shall document each instance of notification; and
- (d) Provided in writing to the parent or guardian within two (2) calendar days for each use.

4503.2 Each school or program shall maintain records of each incident when physical restraint or seclusion was used. The record shall include:

- (a) The name, age, gender and grade of the student;
- (b) The date and time that physical restraint or seclusion was used;
- (c) The location where the physical restraint or seclusion occurred;
- (d) The names of the person(s) who imposed the physical restraint or seclusion;
- (e) The type of physical restraint or seclusion used;
- (f) The duration of the physical restraint or seclusion;
- (g) Whether the student had a behavioral intervention plan ;
- (h) Whether the child is on an IEP or Section 504 plan; and
- (i) Injuries to student or staff sustained or death resulting from the use of physical restraint or seclusion..

4503.3 The use of restraint or seclusion shall be reported to the superintendent of the Supervisory Union, or designee, whenever:

- (a) An individual staff member has engaged in the use of physical restraint or seclusion three (3) separate times on one or more students; or
- (b) There is injury or death to staff or student; or
- (c) Physical restraint has been used for more than ten (10) minutes;

- or
- (d) Any student has been restrained or secluded three (3) or more times per school year; or
 - (e) A student is restrained or secluded who is not on a behavioral intervention plan; or
 - (f) Any prohibited restraint or restricted form of restraint or seclusion for a given student is used.

4503.4 The use of restraint or seclusion shall be reported to the Department of Education whenever:

- (a) There is injury or death to staff or student ; or
- (b) Physical restraint has been used for more than fifteen(15) minutes; or
- (c) Any prohibited restraint, or restricted form of restraint or seclusion for a given student has been used.

4504 DEBRIEFING FOLLOWING USE OF PHYSICAL RESTRAINT OR SECLUSION

4504.1 Following each incident of physical restraint or seclusion, the school shall implement follow-up procedures that include:

- (a) Within two(2) school days, reviewing the incident with the student to address the behavior that precipitated the use of physical restraint or seclusion;
- (b) Within two (2) school days, reviewing the incident with the staff person(s) who administered physical restraint or seclusion to discuss whether proper restraint or seclusion procedures were followed;
- (c) An opportunity for parents to participate in the review of an incident o f physical restraint or seclusion within four (4) school days
 - a. Parents shall receive prior written (including e-mail) notice of the review meeting; and
 - b. Meeting shall be convened at a mutually acceptable time and place;
- (d) Determining, in consultation with the parent or guardian, any specific follow up actions to be taken.

4505 TIME OUT ROOMS

A time-out room may be used to help a student to gain composure and may not be used for staff convenience or as a student punishment. A time out room shall be:

- (a) Unlocked at all times
- (a) Large enough to permit safe movement;
- (b) Adequately lit, heated, ventilated and free of sharp or otherwise dangerous objects;
- (c) Permit safe entry and exit and permit the student to leave at any time; and
- (d) Visually monitored at all times by an adult; and

(e) In compliance with all fire and safety codes.

4506 ANNUAL NOTIFICATION

Annually, at or before the beginning of the academic year, each school shall inform all school personnel, parents and legal guardians of students enrolled in a public school, approved independent school or approved tutorial program of the policies pertaining to the use of restraint, seclusion and time out and the intent to emphasize the use of positive behavioral intervention and supports and its intention to avoid the use of physical restraint to address challenging student behavior;

4507 COMPLAINTS AND INVESTIGATIONS

4507.1 A parent or school personnel may file a complaint regarding the use of, physical restraint, seclusion, or time-out at any time in accordance with school district policy.

4507.2 The complaint shall be in writing and shall be directed to the principal of the school or director or administrator of the program in which the student participates.;

(a) If the person filing the complaint is unable to submit the complaint in writing, the recipient of the complaint shall complete the form based on a verbal complaint. In this case, the complainant shall be provided with a copy of the complaint.

4507.3 All complaints shall be investigated and written findings issued within thirty (30) days;

4507.4 Unresolved complaints shall be directed to the superintendent of the Supervisory Union where the student resides in accordance with the school board's established complaint process. A student on an individualized education plan (IEP) or Section 504 Plan may also use the dispute resolution options available under Rules 2365.1.4 – 2365.1.6.

4508 MONITORING AND CORRECTIVE ACTION

The commissioner shall review reports received pursuant to Rule 4503.4 and identify those schools in need of additional training and, when the data reflect an over-use of these interventions, shall direct the school to work with the department to develop a corrective action plan.

4509 EFFECTIVE DATE

These Rules are adopted as emergency rules and are to be effective August 25, 2010.